

§ 59-1071. Plan of merger.

(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing all of the following:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.
- (2) The name of the merging business entity that shall survive the merger.
- (3) The terms and conditions of the merger.
- (4) The manner and basis of converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity, or into cash or other property in whole or in part, or of cancelling the interests.
- (5) If the surviving business entity is a domestic limited partnership, any amendments to its certificate of limited partnership that are to be made in connection with the merger.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the domestic limited partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the domestic limited partnership is a party, or any other agreement or document.

(b) In the case of a merging domestic limited partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no provision, by the unanimous consent of its partners. If any partner of a merging domestic limited partnership has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic limited partnership shall require the consent of that partner. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if there is no such provision, as determined by the unanimous consent of the partners. (1999-369, s. 4.8; 2001-387, ss. 143, 145; 2005-268, s. 58; 2018-45, s. 32.)